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RUB-U-RITE TRUCKING, INC.
7 dba Nevada Organics

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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

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12 RUB-U-RITE TRUCKING, INC. dba
Nevada Organics, a Nevada
corporation,

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR COMPETITION,
AND INJUNCTIVE RELIEF**

14 Plaintiff,

**Lanham Act, 15 U.S.C. §§1051 et
seq.**

15 vs.

DEMAND FOR TRIAL BY JURY

16 NEVADA ORGANIX LLC, a Nevada
limited liability company; and
17 DOES 1 through 50, inclusive,

18 Defendants.

19 _____ /
20 COMES NOW PLAINTIFF, RUB-U-RITE TRUCKING, INC. dba Nevada
Organics ("Nevada Organics" or "Plaintiff"), a Nevada corporation,
22 by and through its undersigned counsel, and files this Complaint
against the above-named Defendants, averring and alleging as
24 follows:

25 **PREFACE**

26 1. This is an action to enjoin and collect damages stemming
from Defendant Nevada Organix LLC's ("Nevada Organix" or
28 "Defendant") intentional acts of trademark infringement and unfair

1 competition under the Lanham Act, 15 U.S.C. §1051 et seq., as well
2 as common law and state law.

3 **JURISDICTION, VENUE, AND PARTIES**

4 2. This case and controversy arise under the laws of the
5 United States and the State of Nevada.

6 3. This Court has original jurisdiction of this trademark
7 matter, pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338.
8 The Court has supplemental jurisdiction over the related state and
9 common law claims set forth below, pursuant to 28 U.S.C. §1337.
10 Nevada Organics' claims are predicated upon the Trademark Act of
11 1946, as amended, 15 U.S.C. §1051, et seq. ("Lanham Act"), and
12 substantial and related claims under the statutory and common law
13 of the State of Nevada.

14 4. Nevada Organics is a Nevada corporation with its principal
15 place of business in Carson City, Nevada.

16 5. Nevada Organix is a Nevada limited liability company with
17 its principal place of business in the State of Nevada, having been
18 formed in Carson City, Nevada.

19 6. The true names and/or capacities of Defendant DOES 1
20 through 50, are unknown to Plaintiff, who therefore cannot identify
21 them at this time. When the true identities and/or capacities of
22 DOES 1 through 50 are ascertained, Plaintiff will seek leave of
23 court to amend this Complaint to reflect the same.

24 7. Plaintiff is informed and believes, and based thereon
25 alleges, that each of the Defendants is, and at all times herein
mentioned was, the agent, servant, co-conspirator, and employee of
each of the remaining Defendants, and each of the acts or failures
to act of each of the Defendants, as herein alleged, were within

1 the course and scope of each such Defendant's authority as such
2 agent, servant, and employee, with the permission, consent,
3 knowledge, prior authorization, and subsequent ratification of each
4 of the remaining Defendants.

5 8. Venue is proper in the District of Nevada, under 28 U.S.C.
6 §1391(b), in that Defendant, Nevada Organix, "resides" (see 28
7 U.S.C. §1391(c)(2)) in the district, as an LLC filed in Carson
8 City, Nevada and subject to personal jurisdiction there; and a
9 substantial part of the events or omissions, giving rise to the
10 within claims, took place in the district, specifically in and
11 about Carson City, Nevada.

GENERAL ALLEGATIONS

13 9. Nevada Organics realleges Paragraphs 1 through 8 and
14 incorporates same herein by reference, as though expressly set
15 forth herein.

16 10. Nevada Organics has been using its trademark, NEVADA
17 ORGANICS®, for selling its landscaping and roadway products,
18 including humus and soils, since as early as March 8, 1995.

19 11. The United States Patent and Trademark Office registered
20 the NEVADA ORGANICS® trademark on September 29, 2015. See the
21 attached Exhibit A, U. S. Trademark Certificate of Registration of
22 NEVADA ORGANICS®, for organic landscape materials, namely humus and
23 top soil. Therefore, Plaintiff is presumed to have the exclusive
24 right to use the NEVADA ORGANICS® mark, in Nevada and throughout
25 the United States, in relation to the same or similar goods and
26 services.

27 12. Similarly, on March 11, 2015, the Nevada Secretary of
28 State registered the NEVADA ORGANICS® trademark in the State of

1 Nevada, for sales and delivery of landscape and roadway materials,
2 decomposed granite, humus, topsoil, rock, and sand. See the
3 attached Exhibit B Nevada Certificate of Registration for NEVADA
4 ORGANICS®.

5 13. On information and belief, Defendant Nevada Organix has
6 been in the process of licensing and preparing to open a marijuana
7 cultivation, production, and dispensing business in Nevada since on
8 or about October 4, 2013. See Exhibit E, pages 21-26, evidencing
9 Secretary of State formation of Nevada Organix and State marijuana
10 licensing.

11 14. Nevada Organics does business in and about the Carson
12 City area, where Nevada Organix has obtained its Nevada State
13 license to cultivate, produce, and dispense marijuana products.
14 Id.

15 15. There is a likelihood of confusion, in the public's mind,
16 as to the source of the NEVADA ORGANICS® and NEVADA ORGANIX branded
17 goods and services.

18 16. Nevada Organix use, or intended use, of the NEVADA
19 ORGANIX mark infringes and imminently threatens to infringe upon
20 Nevada Organics' longstanding use of the NEVADA ORGANICS® mark.
21 There has already been actual public confusion, by way of
22 misdirected phone calls. See the attached Exhibit C Misdirected
23 Phone Log.

24 17. Nevada Organix is actually aware of its infringement and
25 so far has refused to cease its infringing activities. The
26 continuous infringing and infringement threatening activities by
27 Nevada Organix are therefore, by definition, willful. This is an
28 "exceptional" trademark infringement case under the Lanham Act.

1 See, e.g., Exhibit D hereto, wherein, by press account, Defendant's
2 principal, Bill Myer, admits during a public hearing before the
3 Carson City Planning Commission, in response to allegations of
4 confusion between the NEVADA ORGANICS and NEVADA ORGANIX marks,
5 that "if problems arise he can communicate about what might be
6 done." However, Defendant and Mr. Myer have been repeatedly
7 advised of infringement problems, in public hearings, and by way of
8 multiple cease-and-desist letters. But Defendant has nevertheless
9 failed and refused to communicate, respond to cease and desist
10 letter, or stop use and threatened use of the infringing NEVADA
11 ORGANIX mark. See the attached Exhibit E Cease and Desist Letters
12 delivered to Nevada Organix by Plaintiff's attorney, which have
13 been utterly ignored, further confirming that this is an
14 exceptional trademark infringement case under the Lanham Act.

FIRST CAUSE OF ACTION

FEDERAL TRADEMARK INFRINGEMENT

Violation of Lanham Act, 15 U.S.C. §1114

(against all Defendants)

19 18. Nevada Organics realleges Paragraphs 1 through 17 and
20 incorporates same herein by reference, as though expressly set
21 forth herein.

22 19. Defendants' distribution, marketing, promotion, offering
23 for sale, and sale of goods that bear the NEVADA ORGANIX name, or
24 threat thereof, is likely to cause confusion, mistake, or deception
25 as to the source, affiliation, sponsorship, or authenticity of
26 Defendants' goods.

27 20. As a result of Defendants' unauthorized use of trademarks
28 that are confusingly similar to Nevada Organics' federally and

1 state-registered NEVADA ORGANICS® mark, the public is likely to
2 believe that Defendants' goods have been manufactured, approved by,
3 or are affiliated with Nevada Organics. Consequently, Nevada
4 Organics' ability to gain revenue through the sale of merchandise
5 bearing the NEVADA ORGANICS® mark is being limited and infringed on
6 by Nevada Organix.

7 21. Defendants' unauthorized use of the confusingly similar
8 NEVADA ORGANIX trademark falsely represents Defendants' products as
9 emanating from or being authorized by Nevada Organics and places
10 beyond Nevada Organics' control, the quality of products bearing,
11 and the message associated with, the Nevada Organics' registered
12 NEVADA ORGANICS® trademark.

13 22. Defendants' infringement of the NEVADA ORGANICS®
14 trademark is willful, intended to reap the benefit of the goodwill
15 of Nevada Organics, and violates Section 32(1) of the Lanham Act,
16 15 U.S.C. §1114(1).

17 23. As a result of Defendants' wrongful conduct, Nevada
18 Organics has suffered, and will continue to suffer, substantial
19 damages and irreparable harm.

20 24. Under 15 U.S.C. §1117(a), Nevada Organics is entitled to
21 recover damages, which include any and all profits Defendants have
22 made as a result of their wrongful conduct.

23 25. Nevada Organics is also entitled to injunctive relief
24 pursuant to 15 U.S.C. §1116(a). Nevada Organics has no adequate
25 remedy at law for Defendants' wrongful conduct, because among other
26 things, (a) the NEVADA ORGANICS® trademark is unique and valuable
27 property which has no readily determinable market value, (b)
28 Defendants' infringement constitutes irreparable harm to Nevada

1 Organics, such that Nevada Organics could not be made whole by any
2 monetary award, (c) if Defendants' wrongful conduct is allowed to
3 continue, the public is likely to become further confused,
4 mistaken, or deceived as to the source, origin, or authenticity of
5 the infringing materials, and (d) Defendants' wrongful conduct, and
6 the resulting damage to Nevada Organics, is continuing.

7 26. Nevada Organics is also entitled to an order compelling
8 the impounding of all infringing materials being used, offered,
9 marketed, or distributed by Defendants.

10 27. Further, Nevada Organics is entitled to recover its
11 attorney's fees and costs of suit pursuant to 15 U.S.C. §1117, in
12 that this is an exceptional case of trademark infringement.

SECOND CAUSE OF ACTION

FALSE DESIGNATION OF ORIGIN / UNFAIR COMPETITION

Violation of Lanham Act, 15 U.S.C. §1125(a)

(against all Defendants)

17 28. Nevada Organics realleges Paragraphs 1 through 27 and
18 incorporates same herein by reference, as though expressly set
19 forth herein.

20 29. Defendants' distribution, marketing, promotion, offering
21 for sale, and sale of goods bearing the NEVADA ORGANIX trademark
22 constitute false designations of origin and false descriptions or
23 representations that Defendants' products originate from or are
24 authorized by Nevada Organics, when in fact they are not. Such
25 conduct limits Nevada Organics' ability to interact with potential
26 supporters and gain contributions through the sale of merchandise
27 bearing the original NEVADA ORGANICS® trademark.

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1 30. As a result of Defendants' unauthorized infringement of
2 the NEVADA ORGANICS® trademark by use of a mark or marks that are
3 confusingly similar to the NEVADA ORGANICS® trademark, the public
4 is likely to be misled and confused as to the source, sponsorship,
5 or affiliation of Defendants' products.

6 31. Defendants' conduct is willful, and intended to reap the
7 benefit of Nevada Organics' goodwill, and violates Section
8 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

9 32. Defendants' wrongful conduct is likely to continue unless
10 restrained and enjoined.

11 33. As a result of Defendants' wrongful conduct, Nevada
12 Organics has suffered and will continue to suffer damages and
13 irreparable harm. Nevada Organics is entitled to injunctive relief
14 and to an order compelling the impounding of all imitation and
15 infringing trademarks being used, offered, advertised, marketed,
16 installed, or distributed by Defendants.

17 34. Nevada Organics has no adequate remedy at law for
18 Defendants' wrongful conduct because, among other things, (a) the
19 NEVADA ORGANICS® trademark is unique and valuable property
20 which has no readily determinable market value, (b) Defendants'
21 infringement constitutes harm to Nevada Organics' such that Nevada
22 Organics' could not be made whole by any monetary award, (c) if
23 Defendants' wrongful conduct is allowed to continue, the public is
24 likely to become further confused, mistaken, or deceived as to the
25 source, origin, or authenticity of the infringing materials, and
26 (d) Defendants' wrongful conduct, and the resulting damage to
27 Nevada Organics is continuing.

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1 35. The Lanham Act allows for an award of attorney's fees in
2 "exceptional cases." 15 U.S.C. §1117(a). A trademark case is
3 exceptional where the district court finds that the defendant acted
4 maliciously, fraudulently, deliberately, or willfully. See, e.g.,
5 *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 615 (9th Cir.
6 2010). Due to Nevada Organix' deliberate, and willful conduct,
7 this is an exceptional case entitling Plaintiff to an award of
8 attorney's fees.

THIRD CAUSE OF ACTION

NEVADA STATUTORY TRADEMARK INFRINGEMENT

Violation of NRS Chapter 600

(against all Defendants)

13 36. Nevada Organics realleges Paragraphs 1 through 35 and
14 incorporates same herein by reference, as though expressly set
15 forth herein.

16 37. Defendants' use of the infringing NEVADA ORGANIX mark,
17 without the consent of Nevada Organics, in connection with the
18 sale, offering for sale or advertising of Nevada Organix' goods or
19 services, is likely to cause confusion or mistake or result in
20 deception as to the source of origin of such goods or services.

21 38. As a result of Defendants' unauthorized use of the
22 infringing NEVADA ORGANIX mark, which is a colorable imitation of
23 the federally and state registered NEVADA ORGANICS® mark, the
24 public is likely to believe that Defendants' goods have been
25 manufactured, approved by, or are affiliated with Nevada Organics,
26 and be confused. Consequently, Nevada Organics' ability to gain
27 revenue through the sale of merchandise bearing the NEVADA
28 ORGANICS® mark is being limited, diluted, and infringed upon by

1 Nevada Organix.

2 39. Defendants' unauthorized use of the confusingly similar
3 NEVADA ORGANIX trademark falsely represents Defendants' products as
4 emanating from or being authorized by Nevada Organics and places
5 beyond Nevada Organics' control, the quality of products bearing,
6 and the message associated with, the registered NEVADA ORGANICS®
7 trademark.

8 40. Defendants' infringement of the NEVADA ORGANICS®
9 trademark is willful and intentional, intended to be used to cause
10 confusion, mistake or deception, intended to reap the benefit of
11 the goodwill of Nevada Organics, and violates NRS 600.420(2).

12 41. As a result of Defendants' wrongful conduct, Nevada
13 Organics has suffered, and will continue to suffer, substantial
14 damages. Under NRS 600.430, Nevada Organics is entitled to recover
15 damages, which include any and all profits Defendants have made as
16 a result of their wrongful conduct.

17 42. In addition, because Defendants' infringement of the
18 NEVADA ORGANICS® trademark was willful and intentional, within the
19 meaning of NRS 600.420(2), the award of actual damages and profits
20 should be trebled pursuant to NRS 600.430(2)(c).

21 43. Nevada Organics is also entitled to injunctive relief
22 pursuant to NRS 600.430(2)(a). Nevada Organics has no adequate
23 remedy at law for Defendants' wrongful conduct because, among other
24 things, (a) the NEVADA ORGANICS® trademark is unique and valuable
25 property which has no readily determinable market value, (b)
26 Defendants' infringement constitutes irreparable harm to Nevada
27 Organics such that Nevada Organics could not be made whole by any
28 monetary award, (c) if Defendants' wrongful conduct is allowed to

1 continue, the public is likely to become further confused,
2 mistaken, or deceived as to the source, origin, or authenticity of
3 the infringing products, and (d) Defendants' wrongful conduct, and
4 the resulting damage to Nevada Organics, is continuing.

5 44. Pursuant to NRS 600.430, Nevada Organics is entitled to
6 an order compelling the impounding of all infringing materials
7 being used, offered, marketed, or distributed by Defendants, and to
8 trebled damages, because Defendants' violations consist of the
9 intentional imitation and infringement of Plaintiff's registered
10 trademark.

11 45. Nevada Organics is also entitled to recover its
12 attorney's fees and costs of suit pursuant to NRS 600.430(3).

13 **FOURTH CAUSE OF ACTION**

14 **COMMON LAW TRADEMARK INFRINGEMENT**

15 **(against all Defendants)**

16 46. Nevada Organics realleges Paragraphs 1 through 45 and
17 incorporates same herein by reference, as though expressly set
18 forth herein.

19 47. Defendants' aforesaid conduct constitutes trademark
20 infringement in violation of the common law of the State of Nevada.

21 48. Upon information and belief, Defendants' conduct was and
22 is willful and intentional.

23 49. By reason of Defendants' conduct, Nevada Organics has
24 been damaged in an amount to be determined at trial and has
25 suffered and will continue to suffer irreparable injury for which
26 Nevada Organics has no adequate remedy at law.

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FIFTH CAUSE OF ACTION

COMMON LAW UNFAIR COMPETITION

(against all Defendants)

50. Nevada Organics realleges Paragraphs 1 through 49 and incorporates same herein by reference, as though expressly set forth herein.

51. Defendants' aforesaid conduct constitutes unfair competition in violation of the common law of the State of Nevada.

52. Upon information and belief, Defendants' conduct was and is willful and intentional.

53. By reason of Defendants' conduct, Nevada Organics has been damaged in an amount to be determined at trial and has suffered and will continue to suffer irreparable injury for which Nevada Organics has no adequate remedy at law.

WHEREFORE, Nevada Organics prays that:

1. Defendants and their affiliated companies, principals, officers, employees, directors, servants, agents, representatives, distributors, attorneys, and persons, firms or corporations under their control, or in active concert or participation with Defendants, be permanently enjoined and restrained from:

(a) using the NEVADA ORGANIX mark, or any other trademarks that are confusingly similar to the registered NEVADA ORGANICS® trademark, for retail or wholesale products, or making any other unlawful use of the NEVADA ORGANICS® trademark;

(b) directly or indirectly engaging in any conduct that tends to falsely represent that, or is likely to confuse, mislead, or deceive purchasers, Defendants' customers and/or members of the public to believe that the actions of Defendants are sponsored by,

1 licensed by, or in any way affiliated or connected with Nevada
2 Organics.

3 2. The Court order an accounting of Defendants' profits
4 gained as a result of their infringing activities and otherwise
5 unlawful actions;

6 3. The Court award Nevada Organics all profits received by
7 Defendants from sales and revenues of any kind made as a result of
8 their infringing activities and otherwise unlawful actions;

9 4. The Court award Nevada Organics all damages sustained by
10 Nevada Organics as a result of Defendants' acts of infringement in
11 an amount to be proved at trial, and that such damages be trebled;

12 5. The Court award Plaintiff exemplary and punitive damages
13 to deter any future willful infringement as the Court finds
14 appropriate.

15 6. The Court award Nevada Organics interest, costs, and
16 attorney's fees pursuant to, inter alia, 15 U.S.C. §1117(a) and NRS
17 600.430(3), finding that this is an exceptional case under the
18 Lanham Act.

19 7. The Court order that Defendants file with this Court and
20 serve upon Nevada Organics within thirty (30) days following this
21 Court's injunction, a written report, under oath, setting forth in
22 detail the manner and form in which Defendants have complied with
23 such injunction; and

24 8. The Court award Nevada Organics such other and further
25 relief as the Court deems just and proper.

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1 Dated: December 11, 2015

SULLIVAN LAW
A Professional Corporation

3 By: /s/ J. D. SULLIVAN

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5 Attorneys for Plaintiff,
RUB-U-RITE TRUCKING, INC. dba
Nevada Organics

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7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands trial by jury in the above
9 entitled action, of all issues so triable, pursuant to FRCP Rules
10 38 and 39, and related case law.

11 Dated: December 11, 2015

SULLIVAN LAW
A Professional Corporation

13 By: /s/ J. D. SULLIVAN

14
15 Attorneys for Plaintiff,
RUB-U-RITE TRUCKING, INC. dba
Nevada Organics